

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021 / 2022

UIS4612 – LAW OF INSOLVENCY

(All Sections / Groups)

28 APRIL 2022

Reading Time: 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 4 Questions only.
3. Attempt **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPIES** of (i) Insolvency Act 1967; (ii) Insolvency Rules 2017; (iii) Insolvency Voluntary Arrangement Rules 2017; (iv) Companies Act 2016; (v) Companies (Winding-up Rules 1972 (incorporating latest amendments); (vi) Companies (Corporate Rescue Mechanism) Rules 2018 and (vii) Rules of Court 2012 into the exam venue. “Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

- (a) Delta Sdn. Bhd. had entered into an agreement with Mr. Omiga for the supply of a special flour for his bakery on 1 October 2020. However, Mr. Omiga neglected to make the payment to Delta Sdn. Bhd. despite numerous reminders sent to Mr. Omiga. On 15 January 2021 Delta Sdn. Bhd. obtained judgment in default against Mr. Omiga for the amount of RM150,000-00 with interest at the rate of 5% per annum from date of judgment until full and final realisation arising from the supply of the special flour to Mr. Omiga under the said agreement. Mr. Omiga did not make any application to set aside the judgment in default and did not pay the judgment sum to Delta Sdn. Bhd.

A Bankruptcy Notice was issued on 12 March 2021 and served to Mr. Omiga by Delta Sdn. Bhd. to his last known address on 13 March 2021, namely Saturday. Delta Sdn. Bhd. claimed that Mr. Omiga committed act of bankruptcy on 21 March 2021. Subsequently Mr. Omiga also filed a claim for damages against Delta Sdn. Bhd. because the special flour supplied to him by Delta Sdn. Bhd. made his cakes taste bitter and could not be sold. Mr. Omiga comes to you seeking advice on whether he can set aside the Bankruptcy Notice on the basis that he has a counter claim against Delta Sdn. Bhd.

- (i) Find the procedure to set aside the Bankruptcy Notice on the grounds that Mr. Omiga has a counter claim.

(10 marks)

- (ii) Assess whether, instead of setting aside the Bankruptcy Notice on the grounds that Mr. Omiga has a counter claim, he comes to you and informs you that the Bankruptcy Notice which was served on him had claimed for RM150,000-00 with interest at the rate of 5% per annum from 15 January 2021 until 12 March 2021, penalty interest of 8% per annum from 1 October 2020 to date of judgment and stamp duty of RM100-00?

(5 marks)

- (b) Mr. Duit was served with a creditor's petition by Bank Kaya Berhad pursuant to his non-compliance of a Bankruptcy Notice served on him by the bank. The creditor's petition was fixed for hearing on 30 April 2020 before the High Court of Malaya in Shah Alam. Mr. Duit informs you that he has only recently gone to the bank to negotiate a settlement on the amount claimed and would like to request for an adjournment on 30 April 2020. Meanwhile, Mr. Duit would like to set aside the Bankruptcy Notice served on him by the bank on the ground that there is an excess amount in the Bankruptcy Notice served on him.

Continued...

Referring to provisions of the law and decided cases, analyse the possibility of Mr. Duit's success in obtaining an adjournment for the hearing on 30 April 2020 and set aside the Bankruptcy Notice at this stage.

(10 marks)

(Total: 25 marks)

QUESTION 2

Ms. Diamond is a world-famous jewellery designer from Singapore. Ms. Diamond's best friend is Ms. Gold, who owns a factory in Malaysia named, *Gold & Jewellery Sdn. Bhd.* ('GJSB'). Ms. Gold is the managing director for GJSB. This factory manufactures jewellery products for both Ms. Diamond and Ms. Gold.

In order to expand the business, GJSB decided to borrow RM1 million from Bank Kaya Berhad ('BKB') and Ms. Diamond has agreed to become guarantor for the loan to GJSB even though she does not live or work in Malaysia at all.

Unfortunately, GJSB could not pay the subsequent instalments. On 10 March 2021, BKB obtained Judgment in Default against GJSB and Ms. Diamond for the sum of RM1 million and interests thereon because GJSB has neglected, failed and refused to repay the instalment for three consecutive months despite of numerous notices been sent to them.

On 15 April 2021, BKB served a statutory notice of demand on GJSB requiring it to pay the sum of RM1 million and interests thereon. On the same day, the Bank also caused a Bankruptcy Notice to be issued on Ms. Diamond for the sum of RM1 million and interests thereon.

On 25 October 2021, BKB presented a Winding Up Petition against GJSB and Bankruptcy Petition against Ms. Diamond. On 2 December 2021, GJSB was wound up and Ms. Diamond was adjudged a bankrupt.

Illustrate:

- (i) What GJSB and Ms. Diamond could do in respect of the proceedings taken against each of them.

(20 marks)

- (ii) Whether GJSB and Ms. Diamond can make payment after commencement of bankruptcy proceedings?

(5 marks)

(Total: 25 marks)

Continued...

QUESTION 3

Sometime in April 2020, Fabulois Sdn. Bhd. (Fabulois) which manufactures personal protective equipment (PPE) for healthcare workers, obtained a loan from Green Bank Bhd.(GBB) for RM 3 million. As security for the loan, it created a fixed charge over the land (the said land), where its factory was built. Two of its directors, Fabu and Lois also gave personal guarantees for the loan. Initially business was good and Fabulois could hardly keep pace with demands for its products. However, by October 2020, a lot of its workers were tested positive with Covid 19 and the factory was ordered to be closed. Fabulois was also fined heavily for having breached Covid 19 employee safety regulations. Consequently, Fabulois suffered heavy losses and was unable to keep up with its loan repayments.

In March 2021, GBB sued both Fabulois and the guarantors separately and obtained summary judgments for the sum of RM2.5 million with interest and costs, against them respectively, in two civil suits. On 1 June 2021, GBB served a statutory notice under the Companies Act 2016 on Fabulois, at its place of business and additionally by way of email to both the directors Fabu and Lois. However, as the factory and office were closed Fabulois was unaware and failed to respond to the statutory notice. On 15 July 2021, GBB commenced winding-up proceedings against Fabulois. However, Fabulois failed to file any affidavit in opposition to the winding-up petition. On 15 Sept. 2021, Bizzy, the lawyer for Fabulois filed and served on GBB's solicitors, an affidavit opposing the winding-up on grounds of lack of service and inaccurate amount. Bizzy, attended the hearing of the creditor's petition on 16 Sept. 2021 and objected to the winding-up. The Court dismissed the objection as being out of time and granted the winding-up Order.

Meanwhile, on 5 October 2021, GBB as a secured creditor, appointed Kollekto, as Receiver and Manager and commenced foreclosure proceedings on the said land and sale of the factory machinery and equipment.

- (i) Assess what measures (if any) Fabulois may take to set aside the winding-up Order and or prevent the sale of the said land, machinery and equipment.

(20 marks)

- (ii) BGG also commenced bankruptcy proceedings against Fabu and Lois. Advise Fabu and Lois if they may oppose the bankruptcy proceedings.

(5 marks)

(Total: 25 marks)

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Answer EITHER Question 4 (a) OR Question 4 (b)**QUESTION 4 (a)**

Funfairs Sdn. Bhd.(FSB) has been in the business of running games and rides for children and adults at shopping malls and outdoor spaces for many years. It has several branches all over Malaysia. It was doing reasonably well and was popular with the public. However, with the Covid 19 pandemic, its business was very badly hit. FSB found that it could not keep up with its payment to creditors. It was forced to downsize and retrench several employees. Several creditors started legal proceedings to recover their debts. Meanwhile, one of the creditors, Rides Equipment Sdn. Bhd. (RESB), obtained judgment for the sum of RM1.5 million on 15 May 2020. On 20 November 2020 they issued a warning notice demanding payment of the judgment sum failing which they would commence winding-up proceedings.

Meanwhile Neo, the CEO of FSB, has been trying to negotiate with potential buyers to attract fresh capital injection and restructure the company. A group of minority shareholders led by Marah, object to this. On 15 March 2021, Marah filed a petition for the winding-up of FSB on the just and equitable grounds that: (i) there was a management deadlock, (ii) the shareholders of FSB had lost confidence in Neo, and that (iii) it threatens the very existence of the company.

Analyse the criteria for winding-up a company on the just and equitable grounds and advise Marah on the viability of his application

(Total: 25 marks)

OR

QUESTION 4 (b)

Covacs Solutions Sdn. Bhd.(Covacs), a pharmaceutical company involved in the research and development of vaccines for rare viral diseases applied for a judicial management order. It claimed to be a 'public interest' company, as it was one of only nine Malaysian pharmaceutical companies involved in vaccine research. Biosecure Sdn. Bhd. an unsecured creditor, with debts representing 3% of Covacs total liabilities intervened and opposed the judicial management application. The grounds of objection were:

- (i) the Originating Summons is not bona fide;
- (ii) the Originating Summons does not meet the statutory threshold;
- (iii) there is no expert opinion and approval of the nominated judicial manager;

Continued...

- (iv) no clear settlement plans;
- (v) proceeds have been assigned to Million Bank Bhd;
- (vi) failure to make full and frank disclosure;
- (vii) the Originating Summons is an abuse of process and is frivolous and vexatious.

The major secured creditor, Million Bank Bhd. and a few other unsecured creditors did not oppose the judicial management application. Covacs had in its application submitted its 'Recovery Plan', which included injection of capital by potential investors, sale of unencumbered assets and income from the continuation of its business.

Analyse the merits for a Judicial Management application by Covacs Solutions Sdn. Bhd and the objection by Biosecure Sdn. Bhd.

(Total: 25 marks)

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